* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : February 8, 2007

44
\+ W.P.(C) 480/2007

SATISH KUMAR ..... Petitioner
Through Mr. Sandeep Sethi Sr. Advocate with
Mr. Aly Mirza Advocate

versus

MCD ..... Respondent
Through Mr. Sanjeev Sabharwal Standing
counsel for MCD with Mr. V.K. Srivastava

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

ORDER

: Dr. S. Muralidhar, J. (open court)

1. This writ petition is by a person operating a kiosk in Mayur Vihar Phase – I, selling fruit juice pursuant to a valid licence issued to him by the respondent Municipal Corporation of Delhi (MCD). Earlier the petitioner had been operating a kiosk near the Madhuban Chowk, opposite Bank of India and in June 2003, the MCD required him to abandon the said kiosk and shift location to Mayur Vihar, Phase-I by an order dated 2.6.2003.

2. Thereafter when the said permission was sought to be revoked without any notice to the petitioner, it required the intervention of this Court by means of an order dated 10.9.2003 in WP(C) No. 4629/2003

to quash the revocation for being in violation of the principles of natural justice. Then, a letter dated 3.2.2004 was issued to him confirming a kiosk at the new site. Again, when the petitioner found that he could not set up his kiosk at the new place, he had to once again approach this Court which by an order dated 1.3.2004 in W.P. (C) No. 7324/2003 directed the MCD to implement "all the obligations contained in their letter dated 3.2.2004." Ultimately, the possession of the said kiosk was handed over to the petitioner on 22.4.2004. Since then he has been selling fruit juice from the said kiosk at Mayur Vihar Phase I.

3. On 5.12.2006, the petitioner deposited the licence fee of Rs.21,000/-, and on 10.1.2007 and his licence was renewed for a period of five years from 7.12.2005 to 6.12.2010. This was done by the following letter addressed to him by the Administrative Officer, Shahdara Zone, MCD:-

> "No. 56/AO/SHJ/2007 Dated: 10.1.07
> To
>
> Shri Satish Malik,
> C-444, Nirman Vihar,
> Delhi-92.
>
> Subject:-<u>Renewal of Kiosk 17,Bhagyawan Apartment, Mayur Vihar Phase-I</u>
>
> Sir,
>
> Deputy Commissioner, Shahdara (South) Zone has been pleased to renew the licence of your kiosk at 17, Bhagyawan Apartment, Mayur Vihar, Phase-I for five years 7.12.2005 to 6.12.2010. You are hereby directed to deposit the renewal licence fee @ Rs.6000/- pm. which

have been enhanced 50% from Rs.4000/- to Rs.6000/- as per terms and conditions of the license.

Sd/-
Admn.
Officer

Shahdara (South) Zone

Copy to:-

1. Dy. Commissioner, Sh(S) for kind information.
2. AC/Sh(S)for kind information.
3. Office copy."

4. It is the case of the petitioner that within less than 24 hours after this renewal of license, a team of officials of the MCD came to the site of his kiosk at Mayur Vihar on 11.1.2007, stopped petitioner's business and sealed the kiosk. They did not offer him any reasons for doing so. His letter dated 12.1.2007 to the MCD remained unanswered. The petitioner then approached this Court by filing this petition on 18.1.2007 questioning the sealing of his kiosk and stoppage of his business.

5. Notice was issued in the writ petition on 19.1.2007 and the an interim order was passed permitting the petitioner to remove the stock of fresh fruits in the shop. Today reply affidavit dated 2.2.2007 has been tendered by Mr. Sanjeev Sabharwal on behalf of the MCD. The above facts are not denied except saying that the petitioner did not comply with the condition of the grant of the alternate kiosk to the effect that he would demolish his earlier kiosk at Madhuban. It is now contended that the petitioner violated the conditions on which he was allotted the kiosk at Mayur Vihar and that he was found encroaching on government land. The fact of the renewal of the licence on 10.1.07

is stated to be a “matter of record so no reply is required.” Therefore, it is not denied that the letter dated 10.1.2007 was indeed issued to the petitioner renewing his licence for the kiosk at Mayur Vihar for five years till 2010.

6. The reason for the sealing of the kiosk is contained in para 6 where it is stated that “during the inspection, Monitoring Committee appointed by the Hon'ble Supreme Court found a lots of public land encroached by the petitioner in the form of juice counter. The kiosk of the petitioner was sealed on the directions of Monitoring Committee.” In response to a query of the Court as to when this inspection took place by the Monitoring Committee and what order was made by the Monitoring Committee in respect of the petitioner's kiosk, Mr. Sabharwal refers to an instruction dated 2.2.2007 issued by the MCD, a copy of which has been placed along with the affidavit. The said instruction dated 2.2.2007 reads as under:-

> “INSTRUCTIONS OF MONITORING COMMITTEE – SUPREME COURT
>
> Supreme Court's constituted Monitoring Committee has observed that no commercial establishment, which have come up on encroached government land shall be recommended for de-sealing, except temporary de-sealing for a specific reason.
>
> All the Deputy Commissioners of Zone are directed to take cognizance of these instructions of Monitoring Committee and act accordingly.
>
> Sd/-
> ADDL. COMMISSIONER [ENGG.]”

7. A bare perusal of the above instructions shows that it merely reproduces an observation by the Monitoring Committee that “no commercial establishment, which have come up on encroached Government land shall be recommended for de-sealing, except temporary de-sealing for a specific reason.” It is incredible that an instruction of 2.2.2007 is sought to be relied upon to justify an action taken on 11.1.2007. Be that as it may, there is nothing in this document which indicates anything specific to the petitioner’s kiosk. The above instructions are of a general nature. In any event the instruction pertains to de-sealing and not for sealing of commercial establishments for which obviously some factual foundation would have to be laid by the MCD before proceeding to seal the premises which is stated to be encroaching on government land.

8. Even MCD’s affidavit does not indicate when the inspection of petitioner's premises took place and when the Monitoring Committee found that petitioner's kiosk was encroaching upon government land. When asked whether there is any order passed by the Monitoring Committee, Mr. Sabharwal, on instructions from the Administrative Officer, Shahdara Zone who is present in the Court informs that the sealing in the instant case took place on “verbal instructions” of the Monitoring Committee. This is indeed strange considering that administrative action is expected to be taken on the basis of written orders which would indicated that relevant materials have been taken into consideration for arriving at a decision.

9. It is all the more incredible that all this should have transpired between 10.1.2007 when the licence was renewed and 11.1.2007

when the sealing took place. Otherwise, it is inexplicable that despite the petitioner not conforming to the terms on which he was allotted the kiosk at Mayur Vihar, and despite his encroaching on government land, his licence was renewed on 10.1.2007 for five years with effect from 2005.

10. Mr. Sabharwal also does not deny that in the instant case, no show cause notice was ever issued to the petitioner prior to the sealing which took place on 11.1.2007. It was never put to the petitioner that he had violated the conditions of the grant of the kiosk, that he had encroached upon the Government land and that on that account this his premises were required to be sealed. Mr. Sabharwal also does not dispute the fact that on 10.1.2007, the petitioner's license for running the kiosk had been renewed by the MCD for a period of five years.

11. In light of the above undeniable facts, it is clear view of sealing of the petitioner's kiosk is arbitrary and totally indefensible and impermissible in law. The MCD cannot act unilaterally on its own perception of what constitutes encroachment without there being some basic factual material. In a case, as the instant one, where a person is operating a kiosk on the strength of a valid licence issued by the MCD, which has not expired, no precipitate action can be taken by the MCD to cancel such licence except in accordance with procedure established by law. The procedure has been set out in the MCD Act and the Rules which have to be adhered to. The basic requirement would be a show cause notice to the licencee which will set out the circumstances, and the facts gathered against the licencee and afford him an opportunity of explaining those circumstances and facts. This

is a pre-condition to either cancelling such license. The sealing of the premises where the licensed activity is carried on can only follow as a consequence of this procedure culminating in a reasoned order that the licence conditions have been violated. The Court does not expect that an action of sealing or de-sealing or any action pursuant to orders of the Hon'ble Supreme Court would be taken pursuant to “verbal instructions” without there being any written order which is passed on the material available on record which has been gathered by observations on the ground. This is a basic protection for any licencee faced with the extreme step of sealing of the premises where the licenced activity is being carried on.

12. If the MCD intends to take any action in future on the basis that the petitioner has violated the conditions of the license or has encroached the government land, it should issue an appropriate show cause notice to the petitioner confronting him with the material gathered against him and offer him an opportunity of explaining the circumstances against him before taking any precipitate adverse action. It will have to abide by the MCD Act and the Rules thereunder in this regard. This is being specifically directed in the light of the fact that the petitioner had already approached this Court on two previous occasions as noticed hereinbefore.

13. The writ petition is allowed with costs of Rs.5,000/- which will be paid by the MCD to the petitioner within four weeks. The MCD will ensure that the petitioner’s kiosk at Mayur Vihar is de-sealed within 48 hours and in any event not later than 4 pm on 10.2.2007.

A copy of this order be given dasti under the signature of the Court Master.

Sd/-
S. MURALIDHAR, J

FEBRUARY 08, 2007
raj